IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 368 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

FAKHRUDDIN ABDULALI TINVALA

Versus

FATMABAI MULLA ADAMJI

Appearance:

1. Civil Revision Application No. 368 of 2001

MR VC DESAI for Petitioner No. 1

MS KJ BRAHMBHATT for Respondent No. 1

..... for Respondent No. 2

RULE SERVED for Respondent No. 2/1

SERVED BY AFFIX.-(R) for Respondent No. 3-6

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/11/2002

ORAL JUDGEMENT

#. The petitioner has filed this revision application challenging the order passed by the Principal Judge, City Civil Court, Ahmedabad, below Exh.54-55 in Civil Misc.

Application No.857 of 1995. So far as Civil Misc. Application No.857 of 1995 is concerned, the same is filed by respondent No.1 - Fatmabai Adamji, which is given under Order 9, Rule 13 of the Civil Procedure Code (hereinafter referred to as "the Code" for short). It is an admitted fact that the said application submitted by her under Order 9, Rule 13 of the Code is pending before the Civil Court Court, Ahmedabad. In the said proceedings, present petitioner submitted an application Exh.55 under Order 1, Rule 10 of the Code for allowing the petitioner to be joined as party respondent in Civil Misc. Application. The say of the petitioner is that, after the final decree was passed in the original suit, being Civil Suit No.2254 of 1988, the petitioner has purchased the disputed property from the original decree holder, namely, Kurban Husain Mulla, who was the original plaintiff of that suit and, now the said original plaintiff has already died, and, therefore, present respondent No.1, who was the original defendant No.1 in the said suit, has joined the heir - widow of deceased Kurban Husain Mulla as party respondent in the said Civil Misc. Application No.857 of 1995. The petitioner submitted the said application before the trial Court on the ground that the widow of deceased decree holder may not have any interest left as the property is now already transferred by way of sale in favour of the present petitioner and that the said Civil Misc. Application may likely to go undefended and that there is collusion between the widow of deceased decree holder and the present respondent No.1. Under these circumstances, the petitioner gave the aforesaid application under Order 1, Rule 10 of the Code on the ground that the petitioner, being purchaser of the property, is vitally interested in the proceedings, and, that he may be allowed to be joined accordingly in Civil Misc. Application No.957 of 1995. Learned trial Judge rejected the said application by considering the scope of Order 1, Rule 10 of the Code, as well as, considering the judgment of the Apex Court reported in AIR 1997 SC 257, which is in connection with the provisions of Order 1, Rule 10 of the Code. The said order of the trial Judge is impugned in this revision application.

#. At the time of hearing of this revision application, it is argued by Mr.Desai, learned advocate, for the petitioner, that the petitioner is the only interested party in the proceedings, who can defend the said application, and the petitioner, being the purchaser of the property in question, is required to be joined in Civil Misc. Application.

#. Ms.Brahmbhatt, learned advocate, appearing for respondent No.1 has resisted this revision application on the ground that the order impugned in this revision application, being interlocutory in nature, revision application under Section 115 of the Code is not competent.

#. During the course of hearing, it is submitted by Mr.Desai, learned advocate, for the petitioner, that the original application, which is given by the petitioner, is under Order 1, Rule 10 of the Code and that the trial Court has considered the said application considering the scope of Order 1, Rule 10 of the Code. However, he requested that the petitioner may be permitted to convert the said application by allowing that application to be converted as an application under Order 22, Rule 10, so that, the petitioner can be permitted to be joined in the said proceedings with the leave of the Court as contemplated by the said provisions.

#. Considering the facts and circumstances of the case, in my view, the petitioner cannot be permitted to convert the original application submitted under Order 1, Rule 10, i.e. application at Exh.55. However, the petitioner is permitted to file substantive application under Order 22, Rule 10 of the Code. If any such application is preferred before the trial Court in Civil Misc. Application No.857 of 1995, the trial Court is directed to dispose of the same in accordance with law and on its own merits without being influenced by the impugned order passed below Exh.55. In short, at the time of deciding such application, observations made by the trial Court at the time of disposing of the application Exh.55 may not be taken into consideration. Since interim relief is already granted by this Court in the present revision application, the same is ordered to be extended upto 10.12.2002 in order to enable the petitioner to prefer appropriate application, as indicated above.

#. In view of the aforesaid observations, Mr.Desai wants to withdraw this revision application. Permission is granted. Civil Revision Application stands disposed of as withdrawn. Ad-interim relief granted earlier stands vacated subject to what is stated above.

(P.B.Majmudar,J)

(pathan)